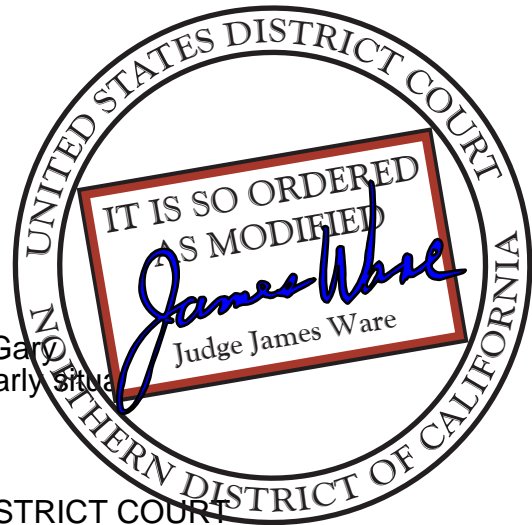


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Weekley, Karen Allen and other employees similarly situated



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JUAN DIAZ, KEITH KEESLING,
CHRISTOPHER MURPHY, GARY
WEEKLEY, KAREN ALLEN and other
employees similarly situated,

Plaintiffs,

v.

CITY OF SAN JOSE,

Defendant.

Case Number: C07-06424 JW

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT
ORDER VACATING PRELIMINARY
PRETRIAL CONFERENCE;
SETTING STATUS CONFERENCE
RE: SETTLEMENT**

Pursuant to the Court's June 25, 2009 Order Continuing Preliminary Pretrial Conference, the parties hereby submit the following Joint Preliminary Pretrial Statement. As this Court is aware, this is a Fair Labor and Standards Act case in which the Plaintiffs are asserting, based on several different theories, that Defendant City of San Jose has not paid Plaintiff firefighters overtime consistent with the Fair Labor and Standards Act for the last several years. The City denies these allegations.

Since the parties last submitted a joint pretrial conference statement on June 19, 2009, the parties have made significant progress in their ongoing settlement discussions. Although all of the details are not, as yet, worked out, the parties are in tentative agreement

1 regarding the major terms that would be included in a settlement agreement. These major
 2 terms include agreement back pay and liquidated damages, the "credits" to which the City is
 3 entitled against back pay, and the kinds of premium pays that will be included in future FLSA
 4 calculations. The parties are in discussions regarding attorneys fees and costs, the method
 5 to be used for binding all plaintiffs to the settlement agreement, and the development of a
 6 process that plaintiffs can use to ensure compliance with the settlement agreement in the
 7 future.

8 Because of their focus on settlement discussions, which have been complex and time
 9 consuming, and in an effort to minimize costs, the parties have yet to engage in substantial
 10 discovery in preparation for trial. In light of the current status of settlement discussions, and
 11 the uncertainty of what a reasonable pre-trial schedule in this case should be at this time, the
 12 parties request a 60 day continuance of the pre-trial conference. The parties believe that,
 13 within the additional 60 days, the parties will most likely be able to finalize a settlement in this
 14 matter, to narrow the issues by agreeing to a partial settlement, or else be at impasse.

15 Dated: August 21, 2009

RICHARD DOYLE, City Attorney

17 By: /S/
 18 ROBERT FABELA
 Sr. Deputy City Attorney

19 Attorney for Defendant CITY OF SAN JOSE

20 Dated: August 21, 2009

WYLIE, McBRIDE, PLATTEN & RENNER

22 By: /S/
 CAROL L. KOENIG

23 Attorneys for Plaintiffs JUAN DIAZ, KEITH
 24 KEESLING, CHRISTOPHER MURPHY,
 GARY WEEKLEY and KAREN ALLEN

ATTESTMENT OF CONCURRENCE PER GENERAL ORDER 45 FOR FILING:

I attest that concurrence in the filing of this document by the signatories, Robert Fabela and Carol Koenig, has been obtained, and that a record of the concurrence shall be maintained at the Office of the City Attorney.

Date: August 21, 2009

By: _____ /s/
CAROL L. KOENIG

CASE MANAGEMENT [PROPOSED] ORDER

Based on the representations in the parties' Joint Statement, the Court finds good cause to VACATE the Preliminary Pretrial Conference currently set for August 31, 2009. The Court sets a Status Conference re: Settlement for **November 2, 2009 at 10 a.m.** On or before **October 23, 2009**, the parties shall file a Joint Status Statement to update the Court on the progress of their settlement.

Dated: August 31, 2009



JAMES WARE
United States District Judge

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